A CRITICAL LOOK AT THE MOTOR CAR POLICY*

First, let me say that the views in this paper are entirely my own and not necessarily the views of my company.

This is a critical look at a piece of paper and print which we produce with such care for our policyholder, who promptly loses it or burns it but never dreams of reading it. If he did, he would not understand it. If he desperately needed to understand it, he would go to his solicitor who would select any clause at random and proceed to demonstrate that its true construction was the very opposite of the one the insurers thought they intended.

You remember the McKinsey Report of 1965 - opulent and glossy, some parts good, others misguided, misleading and misconceived. In all its 77 pages there is not a single look (critical or otherwise) at the policy. You may not remember the real title of what we have come to call the McKinsey Report. It is this: "Shaping Motor Insurance to Serve a Market of Expanding Risks". I do not profess to understand this; I think it is a piece of grandiose transatlantic scientific management consultancy jargon. But if we are going to shape motor insurance to serve anything or anybody, we ought to think of the shape of the policy and the shape of its contents. Some people might say, as Hamlet said on one famous occasion, "Thou com'st in such a questionable shape".

Two years ago I reviewed in one of the insurance journals the latest edition of Batten & Dinsdale's text-book on motor insurance. At one part of my review I was commenting on the book's description of the literal shape of the policy with its many sections and with all the individual insertions grouped in a schedule forming part of the policy. I said this: "I did wish that the authors had gone a little further and given the pros and cons of the still newer form of policy, which is so beloved by the computer experts and which sets out a vast range of cover and then has a little something somewhere to state that only certain parts of it are operative". Perhaps I was trailing my coat so that someone could pick a fight with me. No one did - maybe because no one can penetrate the mystique which surrounds computers and computer men; maybe because no one sees anything wrong with the latest form of policy; maybe because everybody is too busy to bother.

Computer specialists want long runs of whatever data and documents are fed into and spewed out of the machine. To have separate prints of policy forms according to cover - comprehensive, third party fire and theft, third party only - is an interference with the system. So is the provision for endorsements to extend or limit the cover. This interference breaks up the long mass-production runs. It also creates

---

* Address given to the Association on 23 April, 1968, by Mr. G. L. Bateson, A.C.I.I. (Co-operative)

opportunities for error; third party only risks may be fed into the machine at one end and, if the wrong roll of paper is put in at the other end, the machine may churn out comprehensive policies at third party premiums. This process is not very profitable to the insurance company!

So at the dictates of the computer wizards we now see the system whereby a very comprehensive policy form may soon be the only one used. Thus, you can skip through your policy, noting with glee a dozen or more headings of cover - third party liability, accidental damage, fire and theft, luggage, medical expenses, £1,000 personal accident benefit (sometimes to your wife as well) - and you can tell all your friends what a marvellous company you have found which gives you all that car insurance for only £4. 10s. 0d. a year. But if and when you scrutinise the schedule, you may find in it somewhere the limiting factor - the little line that tells you that only one or two of the dozen headings of cover apply to you; your cover is third party only. It is to be hoped that you do your scrutiny before, and not after, you have your accident.

I do not presume to attack the computer policy. I merely ask whether we know where we have arrived and where we are going. The great public concern about the packaging and labelling of commodities should be considered in relation to the package-deal car policy. Manufacturers have been criticised for producing giant packets of soap flakes which in fact are only two-thirds full, or jars of face cream with cunning design features such as chamfered sides so that the content is only half as much as it looks. Some legislation, such as the Weights and Measures Act, 1963, certain sections of which have now been operative for two years, is a result of these campaigns by the Consumers' Association and others.

The Consumers' Association, in its monthly magazine "Which?", took a critical look at the car insurance policy two years ago. The policy was criticised on three counts: first, the near impossibility of understanding it; secondly the difficulty of determining what any section really covers - you have to study that section, plus the specified exceptions to it, plus the general exceptions elsewhere, plus the conditions elsewhere, plus the description of use clause, plus the schedule, plus any endorsements, plus (perhaps) the certificate of insurance, plus the proposal form that is the basis of the whole thing. The third criticism by the Consumers' Association was that there is no standard comprehensive policy in car insurance, and that there should be a statutory comprehensive wording so that it would then be forbidden by law to apply the term "comprehensive" to anything more restricted than the statutory model. This suggestion drew a chorus of "Hear Hears" from many other magazines and organisations catering for motorists. It was canvassed again, only last month, by Professor Harry Street whose book I shall refer to later.

Some of the exuberant incomprehensibility of the car policy is our own fault, while some of it is not. Max Beerbohm starts one of his essays with these words: "Beautifully vague though the English language is, with its meanings merging into one another as softly as the facets of landscape in the moist English climate ..." This is all very poetic, of course, but do we really try hard enough to overcome the alleged disadvantages of the English language?

Of course, parts of the third party section of the car policy must necessarily adopt and repeat the Parliamentary draftsmen's flights of fancy in the Road Traffic Acts. There is that notoriously vague expression "except in the case of a vehicle in which passengers are carried by reason of or in pursuance of a contract of employment". That comes in Section 203 of the 1960 Act, where it is stated that passenger risk is not normally a compulsory insurance but in the circumstances described it is compulsory. I fervently hope we can say good-bye to that when all passenger insurance becomes compulsory - and the sooner the better, in my opinion.

Some of the policy, too, is hallowed by years of decision and litigation which have wrapped specific explanations and meanings around our wording. If, in the attempt to achieve simplicity or coherence or modernity, we now choose a different wording, are we in danger of being taken to mean something different, possibly very different, from what we meant before? And perhaps we are entitled to say that the car insurance policy is not just a bit of paper referring to £20 worth of liability for a vacuum cleaner on hire purchase. It is the evidence of a contract with liabilities which can run into tens of thousands of pounds. The biggest single car insurance claim I have personally handled (under a very ordinary policy on a very ordinary car) cost £45,000. There are people who could beat that with occasional claims over £50,000. And with potential liabilities of that magnitude, we are entitled to be cautious before playing with the well-settled wording of basically good policies. So I am not one of those glib critics who would rewrite the policy in five minutes in what they are pleased to call common language.

Consider, too, the wording of exceptions and provisos and restrictions of various kinds. Professor Hardy Ivamy, in his excellent "General Principles of Insurance Law", writes of judicial suggestions (one fire insurance case dating back to 1814) that stringent conditions should be shown conspicuously. And he goes on to say, as indeed we all know, that this demand is not easy to reconcile with most decisions of the courts in this country. Yet do we in Britain in our car policies make sufficient effort to convey clearly the boundaries of the cover that we are giving? The old joke, about the small print taking away what the big print gives, does have a certain justification. I know that in the oft-quoted case of Koskas v. Standard Marine Insurance Co. (1927) 137 L.T.165, an exception clause was upheld because, although it was in very small print, it was in distinct print. But it might do us good

to remember that only three years ago, in January, 1965, the Hire Purchase Act, 1964, came into force providing for detailed regulations as to the size of the print to be used in certain kinds of hire purchase agreements. I think the day has long since gone when insurance companies can afford to use very small print. This was one of the points made in the Consumers' Association survey of car insurance, and it does behove us to take pains to provide for our insured a policy that not only is good but also can readily be seen to be good.

You may remember a Law Reform Committee report eleven years ago. It was on "Conditions and Exceptions in Insurance Policies". The Committee's terms of reference had no specific connection with motor insurance, but it is an open secret that it was anxiety about car insurance practice which led the Lord Chancellor to refer the matter to the Committee. The report strongly hinted (although it made no direct recommendation) that the law should be changed so that an agent, negotiating with a proposer for a contract of insurance, would become the agent of the insurers, and the knowledge of that agent would be the knowledge of the insurers. It is fair to say that the Scottish Law Reform Committee, reporting a little later, came to a rather different conclusion and apparently saw no need for any change.

No change in law has actually come about. Almost certainly, this is because the main-line insurance companies decided immediately, back in 1957, to give as much practical effect to the English Committee's wish as possible. Companies went a long way to treating knowledge of the agent or his servant or sub-agent as knowledge of the company. And yet in recent years there has been a rush of declarations on car insurance proposal forms, including those of several companies within the British Insurance Association and of several others who would like to be - declarations which say quite the contrary. The contrary declaration I mean includes something like this:

> "I further declare that if any part of this proposal is filled in by any person other than the undersigned such person shall be deemed to have been my agent and not the agent of the company".

The proposal and declaration are then incorporated in the policy in the usual way and become the basis of the contract.

I doubt whether this is in accord with the social responsibilities of the second half of the 1960s. Is it right to saddle the proposer in this day and age with personal responsibility for the act of the agent who was appointed by the company? Of course, companies may well be fearful of fraud or carelessness by some of the people they appoint as agents with such joyous abandon. It is a pity there is not more discrimination in the appointment of agents, but, even if there were, some agents would let the company down in a variety of ways. I suggest

this is one of the commercial risks an insurance company must accept. Should an insurance company (above all companies) make the policyholder carry such an onerous personal risk? Or is there some theory that we should be developing a separate policy for insuring a proposer against the risk of being let down by the agent appointed by the company which now declares the policy invalid?

There is one reported case since the Law Reform Committee Report of 1957. It is Facer v. Vehicle & General (1965), 1 Lloyd's Rep.113. The proposer told the agent he had only one eye. The agent filled in the proposal form showing no physical defect. The proposer signed it, without reading it. The proposal declared that the filler-in was to be regarded as the proposer's agent. On an action by the policyholder, Mr. Justice Marshall held that the insurers were entitled to avoid the policy. The old rule of agency in Newsholme v. Road Transport (1929) 2 K.B.536 was applied and the agent was held to be the agent of the proposer. Mr. Justice Marshall said he was strengthened in applying the rule because the proposal before him contained this special and restrictive declaration. I do not question that decision. In the present state of the law it was perfectly proper. But I do wish that the insurance market as a whole would give effect to the clear and unanimous wish of the English Law Reform Committee - a Committee which, incidentally, co-opted to itself that learned and energetic first President of this Association, the late Professor Denis Browne. And, if I may connect it further with this Association, a survey of the Committee's report published in one journal urged that the Committee's wishes receive the full approval of the industry - and the initials at the end of that survey were G.W.S. which (if I mistake me not) belong to a current Vice-President of this Association! So this Association might consider that it has a special interest in this problem.

Similar points might be made about arbitration. Before 1958 the arbitration condition in all car policies bound the insured to arbitration as a first step in all disputes. Most companies drew up their arbitration conditions quite fairly, but unfortunately a minority of companies did not. And some cases arose which bordered on the outrageous which in turn led to certain judges exploding into violent language, especially on policy requirements that claims be made within some pitifully short period or all rights be forfeited in the absence of submission to arbitration within one month. This became one of the matters considered by the Law Reform Committee in this 1957 report. But the report said that since the enquiry into arbitration began, the British Insurance Association and Lloyd's had agreed "to refrain in general from insisting upon the enforcement of arbitration clauses if the insured prefers to have the question of liability, as distinct from amount, determined by a court". So the B.I.A. companies and Lloyd's underwriters altered their arbitration clauses and the Law Reform Committee said that no change in law was therefore needed.

However, the motor insurance market in 1968 is rather different

from the market in 1958. A few dozen companies to-day were not operating in 1958. Some are in the British Insurance Association. Some are not. Some have adopted the modern arbitration clause. Some have gone back to the earlier versions which were so criticised for imposing severe burdens on the policyholder - burdens which are quite out of keeping with the times. This, of course, is one of the drawbacks of doing something by informal market agreement at one moment of time to avoid a formal change in the law.

You may say that we need not trouble ourselves about the newer companies, the smaller companies, the fringe companies, the quarrelsome companies, with perhaps only 10% of the market. Let me ask you to consider, then, the book published last month in the Penguin "Law and Society" series. It has the simple title "Road Accidents" and is by two Professors of Law - Elliott of Newcastle and Harry Street of Manchester. The book was swallowed hook, line and sinker by reviewers in both The Times and The Guardian. So far as its numerous references to motor insurance are concerned, I consider it a thoroughly bad book. Several long passages are purple and passionate nonsense which sets out to murder the motor insurance companies and their motives. Various matters are covered - policies, printing, conditions, litigation, arbitration, Motor Insurers' Bureau, passenger cover, no claim discount, knock-for-knock, and so on. You name it - Elliott and Street have just played football with it! But the criticism is often based on flimsy, questionable or non-existent evidence, remote from reality. I have just said that the main-line companies and the Lloyd's syndicates, representing perhaps 90% of the market, revised their arbitration conditions ten years ago. Listen to the authors of this new book when they deal with arbitration:

> "It might be thought that if an insurer attempts to hold a motorist to some harsh and arbitrary condition in the policy, the motorist will be able to expose the insurer to the critical public gaze in the ordinary courts, and rely on the court's unwillingness to subject the citizen to harsh and unconscionable bargains set out in the fine print. But this is just what the insurance companies hinder him from doing."

Then the authors go on to paint a ghastly picture of unscrupulous car insurers insisting on arbitration, depriving the insured of legal aid, making him pay all the costs, inviting him to deposit 200 guineas in advance, preventing the press from publishing fair and accurate reports. Some insurance companies, the authors say (and the inference is that they are few), have agreed under pressure not to insist on arbitration on questions of liability, but this agreement is not binding and the companies have not altered the arbitration clauses in the policies and even if you ask them they will refuse.

At best, this is gross exaggeration and distortion. Fair criticism, whether from inside or outside the industry, we should accept.

We should accept that there is a minority of companies in our midst, a small minority, with practices open to criticism and we should try to remedy this. We should accept that all companies are open to criticism on some points where we are too slow to perceive the need for change, and we should pay more attention, and more urgent attention, to this. But these wholly destructive campaigns help nobody, except perhaps the political extremist.

We continue, then, with our critical look at the car policy, and we turn to another clause in the policy. It is usually headed "Avoidance of Certain Terms and Right of Recovery". The Road Traffic Acts put the insurance company under certain legal liabilities that would not otherwise have to be borne. Section 206 of the 1960 Act prevents the company from penalising the injured road user who is within the compulsory insurance provisions. The company may be able to deny its insured the benefit of the indemnity under the policy, but it will nevertheless have to pay the legitimate third party injury claim. The Act then gives the company the right (for what it is worth) to recover the outlay from the insured.

So in the policy there is this clause headed "Avoidance of Certain Terms and Right of Recovery". It says that the insured shall repay to the company all sums paid which would not have been paid but for the Road Traffic Acts. And this is all fine and fair sailing until you come to the awkward point that the mischief that Section 206 of the Act was designed to combat has been largely dissolved by the work of the Motor Insurers' Bureau. In practice, the company issuing the policy will pay the third party claim whether there has been breach of contract or not, whether the warranties as to use and so on are complied with or not, and whether the policy was obtained by misrepresentation or not.

This leads to a curious dilemma for the insurance company. In its economic interest, and in discharge of its social responsibilities and in fulfilment of its Agreement with the Motor Insurers' Bureau, and the separate Bureau Agreement with the Ministry of Transport, the company will proceed to settle a Road Traffic Act claim without forcing needless and costly litigation on itself or the Bureau or the innocent third party. But in doing this the company takes a short cut across the corner, and the rights which are held by those who keep to the road are not now open to it. The company has therefore debarred itself in law from its rights of recovery.

To preserve its rights of recovery what must the company do? Let us take the case of a policy obtained by wilful and calculated misrepresentation which comes to light on the arising of a claim against the insured by a pedestrian. To work strictly by the book the company should first notify the insured of the contention that the contract is void from inception. The company should then commence proceedings and obtain under Section 207 of the Act an official declaration that the policy is so void. It should then let the injured party sue the uninsured policyholder. It should let the policyholder defend the action or not, as he wishes. It should wait for judgment to be given and then,

when it is unsatisfied, pay. If the company does not go through this costly and time-wasting process it cannot demonstrate that an R.T.A. liability has been incurred and judicially assessed in the form of judgment. On the present policy wording, the company cannot hold its insured liable in reimbursement of some amount it has paid by way of private agreement, unless it gets the insured's voluntary agreement first - and the insured is under no obligation to enter into such an arrangement.

I suppose we must again accept some disadvantages as the price for being permitted to have a self-disciplined industry-organised Bureau instead of an additional piece of legislation which might operate more harshly against us in other directions. But I do have more than a twinge of regret about our method of working and our weak policy wording in this respect. It is both difficult and costly to force the fraudulent policyholder to reimburse the company for the havoc he has caused. I grant that many are men of straw, but I still regret that so pitifully few of them ever get sued and that the deterrent effects of some portions of the Road Traffic Acts are thus entirely lost.

And yet, in some ways, I suppose we have moved with the times. A hundred years ago, the poet George Meredith was writing:

> "Around the ancient track marched rank on rank
> The army of unalterable law".

I wonder if the law of the car policy is unalterable? Look back at some of the cases reported in the middle 30s - the boom years of car insurance litigation. How many of them, nestling comfortably in the pages of the text-books, would be decided differently to-day? Take Levinger v. Licenses & General (1936) 54 Ll.L.R.68. There it was held that a car policy covering the business use of the insured as a milliner did not cover her when she made her business into a limited company and continued using her car for that purpose. Then there was Allen v. Universal Automobile (1933) 45 Ll.L.Rep.55 K.B. where the insured declared the purchase price of the car as £285 when it was in fact £271. I calculate his degree of error as less than 5%, and the misrepresentation was in no way material anyway. But the insured still got trampled on, and the insurance company triumphantly avoided paying the claim. There are many other similar cases. On matters involving fine shades of interpretation, the reported decisions of yester-year, whether they went to appeal or not, are not always a good guide to what the insurers are entitled to do this year. I cling to that opinion, no matter how many reference books contain reports of these old cases.

And are we really serious about some of our straining after hair-splitting interpretations? For instance, Shawcross & Lee in their "Law of Motor Insurance" discuss the meaning in law of those well-known words in the policy - use for social, domestic and pleasure purposes and use by the insured in person for business, etc., with exclusions

such as motor trade use. Shawcross dissects the wording and examines at what point various uses can come within the phrasing. Then he says:

> "Difficulty arises where the assured, desiring to sell his car, takes a prospective purchaser out on a trial run. While such a case would hardly be described as use for the motor trade, it is nevertheless doubtful whether it falls within class A risks. It is clearly not use for the assured's business - can it be use for social, domestic or pleasure purposes? It is submitted not."

This is hair-splitting with a vengeance. It may be a throw-back to the first edition of Shawcross which dates back 32 years, when insurance companies did, and were permitted to do, things which they do not do now. Would any insurance company to-day be permitted to take such a narrow view?

Think of other vague or potentially vague phrases which insurance companies have used and sometimes still persist in using, leaving the courts to determine what it was that the companies intended. There is Lloyds Bank v. Eagle Star (1951) 1 All E.R.914 on whether the age of 65½ is, or is not, "over the age of 65 years" within the meaning of a personal accident section of a car policy. And one of the law journals rightly complained that companies could quite easily say "after the 65th birthday", if that really was precisely what they meant.

Two cases from the 1940s may be especially relevant to-day - English v. Western (1940) 2 K.B.156, 164 on the meaning of "member of the insured's household" and Zurich v. Morrison (1942) 2 K.B.53 on "driving regularly and continuously for 12 months". I say "especially relevant" because the trend in rating and underwriting is to call for full disclosure of all drivers, and companies can so easily entrap themselves in a quicksand of ambiguity.

Some of the cases which arise on points of law under car policies create great publicity during their passage through the courts and a certain amount of harm is sometimes done to the insurance market. The company responsible for the publicity may have the best of intentions, for example, to get a decision on a point on which there has previously been no judicial guidance and on which the practice of companies may vary. Such a case, I think, was Kelly v. Cornhill (1964) 1 All E.R. 321 which rambled leisurely through three courts in the three years 1962 to 1964. Kelly senior effected a policy on his car; he did not drive himself and stated that the main driver was Kelly junior. The next year Kelly senior renewed the policy and a few weeks later he died. With the permission of the executors Kelly junior kept on driving - just as he always had done. During that same year of insurance Kelly junior had an accident causing the total loss of the car plus a £300 third party claim. No one had thought to tell the insurance company of the insured's death. The insurance company declined to pay.

Now this was a problem which had exercised a lot of minds over a lot of years. I amassed quite a file myself of comments and articles - some of them my own - on this question whether the death of the insured immediately and automatically precluded any claim arising during the year of insurance. I remember writing one very pained article, long before Kelly's case came up, criticising a police authority which had persisted in prosecuting the bereaved son right through to conviction on a charge of no insurance, although the insurers were giving firm evidence that they considered themselves on cover. But there was obviously more than one point of view. Not all insurers considered themselves on cover.

Kelly's claim for indemnity was dismissed in 1962 in the Outer House of the Court of Session in Edinburgh, i.e., the Scottish equivalent of our High Court. Kelly's appeal was rejected by the Inner House, i.e., the Scottish Court of Appeal. From there it went to the House of Lords where finally Kelly gained his point. By the narrowest of margins, a 3-2 majority, the Law Lords held that, in the Kelly circumstances and as the policy said nothing to the contrary, the contract did not come to an end with the insured's death.

In my critical look at the car policy in relation to the law of motor insurance, I cite this Kelly problem for criticism because of the absence from the policy of any proper guide on what the insurers intend and because that absence leads to confusion anddoubt, to prosecutions and litigation. It should not be beyond the wit of car policy draftsmen to draw the policy boundaries more clearly than they are at present.

Similarly, the car policy should state clearly whether it is terminated by a total loss claim. For years I have argued in speech and in print against the traditional view, which I think is also the wrong view, that a total loss immediately means the end of the policy. That view is a left-over from the Victorian and Edwardian days before accident and motor departments grew out of fire departments with their sums insured and exhaustion and restoration of cover. The traditionalists brandish their three ancient motor cases - Rogerson v. Scottish Auto (1932) 48 T.L.R.17 (H.L), Tattersall v. Drysdale (1935) 2 K.B.174, and Peters v. General Accident (1938) 2 All E.R.267. Not one of them is less than 30 years old. Not one of them actually concerns a total loss. They all involve the sale of the car, not damage to or destruction of it. In fact, so far as the point we want to consider is concerned, this collection falls flat on its face if we look at it seriously.

Professor Ivamy's new book on Motor Insurance, published this month (a very good book, too, even if I am now going to criticise something in it), says that, on a total loss, "the insurance is deemed to be at an end without return of premium". It depends who does the deeming and whether it is unilateral deeming, and whether the contract supports it. I suggest it is quite wrong to declare, without the insured's consent and with nothing in the policy to support it, that all benefits of his comprehensive policy are automatically at an end when you have paid him £500 by way of what you are pleased to call a total loss, but not at an end if

it is a £500 repair bill or, indeed, two or three successive £500 repair bills. If he had a third party policy instead of comprehensive so that his damage was not covered, you would cheerfully transfer his policy to the new car he was buying, and you would not put up arguments about subject-matters being non-existent and cover being automatically exhausted with no return of premium or transfer rights.

The comprehensive policy is a package product of many insurances. Some of them hinge on a specified car and some do not. Various extra benefits, too, may be incorporated. If the insured effected separate policies on the individual items of cover, whether with the same company or not, he certainly could not lose them all by a claim under one item.

You may coerce your insured into submission on that portion of the cover which attaches to the car itself (the own damage section), but I very much doubt whether you can legitimately deprive him of the rest of the policy - unless, of course, you get his voluntary agreement or unless you serve formal notice of cancellation and return some of his premium. If you do wish to deem the whole policy exhausted after a total loss claim, then you should say so, deliberately and specifically, in both your policy and certificate. One or two companies do this - in the policy if not the certificate - but it is not a popular process.

There are all kinds of tricky points about total losses anyway. One car is stolen and disappears without a trace, but is still presumably in existence somewhere and still belongs to the insured and may indeed turn up during the period of the policy. Another is a heap of wreckage which may never pass from the insured's possession or it may be months after the accident date which is supposed to be the automatic date of termination of all cover. Another is a constructive total loss, almost equivalent to a cash payment in lieu of repairs, because someone is going to repair the car and bring it back on the road, and this kind of total loss depends very largely on the state of the salvage market and the Home Office and Ministry of Transport plans which happen to be in operation at any one time.

Then we have the point that a total loss is sometimes paid not as a claim in the accepted sense but as a service to the insured. He is the innocent party in a collision and could quite easily get his money from the other wide if it were not for his own company's insistence on going through knock-for-knock niceties. And you should not sweep away a man's policy when he only makes a claim under it to please you. So when you are trying to say that something happens automatically after a total loss you are not dealing with a static situation anyway. To mis-quote a well-known saying, "All total losses are total, but some are more total than others".

In 1963 the Divisional Court considered the appeal case of Boss v. Kingston (1963) 1 All E. R. 177. Again, like the ancient ones from pre-war days, it concerned the sale of a vehicle rather than its damage or destruction. Indeed, the policy was third party only, so it was

even more remote from total loss claims. The insured had sold his vehicle and was driving a borrowed one. He was convicted of no insurance on the ground that his "driving other vehicles" cover was not operative as on the sale of his own vehicle the policy automatically terminated. The insurers financed the appeal, and they very nearly financed a further appeal to the Lords as they had given evidence that they did consider themselves on cover and they were anxious to promote the idea that the "driving other vehicles" benefit does legitimately continue in force even after the specified vehicle has been sold.

The decision went against their views and against their insured. This is a great pity, especially as most large companies have had an agreement amongst themselves for the last 30 years - an agreement with the unromantic name of Agreement "A" - which says that the company will consider itself on risk in these circumstances for the purpose of applying dual indemnity or a third party sharing agreement.

But let us remember again that all the quoted cases involve the sale of vehicles which at one moment of time pass out of the insured's ownership. The continuance or otherwise of a policy after a total loss is very different, for in many cases there is in law no change of ownership for months and in some cases there is no change of ownership at all. In any event, whatever we mean, we should say so in the policy, and we invite criticism if we do not.

In my critical look at the car policy in relation to motor insurance law, I have selected my "Top Ten" areas of criticism. You may have chosen a different ten, or five, or fifty. But even though this has been a purely personal selection, I hope it has at least produced a fair and objective result.
